



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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CECW-NAD

MEMORANDUM FOR COMMANDER, North Atlantic Division (CENAD-PSD-P)

SUBJECT: Implementation Guidance for Section 4010(b) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – Chesapeake Bay, Chesapeake Bay Oyster Restoration

1. Section 4010(b) of WRRDA 2014 further amends Section 704(b) of the Water Resources and Development Act of 1986 (WRDA 1986) to increase the program authorization of appropriation cap to \$60,000,000. In addition, it specifies that the non-Federal share of a project may be provided through in-kind services, including the provisions of shell stock material that is determined to be suitable for use in carrying out the project. It further provides that for Chesapeake Bay restoration projects carried out after 10 June 2014, in-kind services may include conservation or restoration efforts undertaken by the non-Federal interest that enhance the viability of oyster restoration efforts, are integral to the project, and are cost effective. A copy of Section 704(b), as amended, is enclosed.

2. In general, Section 704(b)(4)(C) of WRDA 1986, as amended, provides that in-kind credit may be afforded for work provided by the non-Federal interest on or after October 1, 2000, for a project of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish, if the work is determined to be integral to the project. However, for land conservation or restoration efforts in the Chesapeake Bay, only work undertaken by the non-Federal interest after 10 June 2014 is creditable. Determinations of whether work is integral to the project will follow the criteria and procedures in Appendix B of ER 1165-2-208. Approval of the Integral Determination is delegated to the MSC Commander.

Encl

EDWARD E. BELK, JR., P.E.
Chief, Operations and Regulatory Division
Directorate of Civil Works

SECTION 704 (b) OF THE WATER RESOURCES DEVELOPMENT ACT OF
1986, AS AMENDED (33 USC 2263(b))

(b) PROJECTS.

(1) IN GENERAL. The Secretary is further authorized to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. There is authorized to be appropriated not to exceed \$60,000,000 to carry out such projects.

(2) INCLUSIONS. Such projects shall be developed, and their effectiveness evaluated, in consultation with the Director of the Fish and Wildlife Service and the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Such projects shall include—

(A) the construction of a reef for fish habitat in Lake Erie in the vicinity of Buffalo, New York;

(B) the construction of a reef for fish habitat in the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida;

(C) the construction of a reef for fish habitat in Lake Ontario in the vicinity of the town of Newfane, New York; and

(D) the restoration and rehabilitation of habitat for fish, including native oysters, in the Chesapeake Bay and its tributaries in Virginia and Maryland, including—

(i) the construction of oyster bars and reefs;

(ii) the rehabilitation of existing marginal habitat;

(iii) the use of appropriate alternative substrate material in oyster bar and reef construction;

(iv) the construction and upgrading of oyster hatcheries; and,

(v) activities relating to increasing the output of native oyster broodstock for seeding and monitoring of restored sites to ensure ecological success.

(3) RESTORATION AND REHABILITATION ACTIVITIES. The restoration and rehabilitation activities described in paragraph (2)(D) shall be—

(A) for the purpose of establishing permanent sanctuaries and harvest management areas; and

(B) consistent with plans and strategies for guiding the restoration of the Chesapeake Bay oyster resource and fishery.

(4) COST SHARING.

(A) In general. The non-Federal share of the cost of any project under this subsection shall be 25 percent.

(B) Form. The non-Federal share may be provided through in-kind services, including—

(i) the provision by the non-Federal interest of shell stock material that is determined by the Secretary to be suitable for use in carrying out the project; and

(ii) in the case of a project carried out under paragraph (2)(D) after June 10, 2014, land conservation or restoration efforts undertaken by the non-Federal interest that the Secretary determines provide water quality benefits that—

(I) enhance the viability of oyster restoration efforts;

(II) are integral to the project; and,

(III) are cost effective.

(C) Applicability. The non-Federal interest shall be credited with the value of in-kind services provided on or after October 1, 2000, for a project described in paragraph (1) completed on or after that date, if the Secretary determines that the work is integral to the project.

(5) DEFINITION OF ECOLOGICAL SUCCESS. In this subsection, the term "ecological success" means—

(A) achieving a tenfold increase in native oyster biomass by the year 2010, from a 1994 baseline; and

(B) the establishment of a sustainable fishery as determined by a broad scientific and economic consensus.

In carrying out paragraph (4), the Chief of Engineers may solicit participation by and the services of commercial watermen in the construction of the reefs.